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CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

Hall Street Associates, L.L.C. v. Mattel, Inc., Nos. 05-35721, 05-35906

GRABER, Circuit Judge, dissenting:

I respectfully dissent because, although the majority correctly identifies the governing legal principles, I conclude that the arbitrator's decision was completely irrational.

Paragraph 12(a) of the Lease provides, as relevant here, that "Tenant shall comply with all federal, state and local environmental laws and regulations in its use of the Premises." Paragraph 12(c) of the Lease provides that the tenant shall not be held liable for certain items "[t]o the extent Tenant has been in compliance with applicable environmental laws." In context, the only rational reading of the phrase "applicable environmental laws" in Paragraph 12(c) is as shorthand for "all federal, state and local environmental laws and regulations in [Tenant's] use of the Premises," the longhand description just given in Paragraph 12(a). That is, any environmental law with which the tenant was required to comply in its use of the premises was "applicable" within the meaning of Paragraph 12 as a whole. Paragraph 12(b) confirms the necessity of interpreting "applicable" in this way because it provides that the tenant "assumes all responsibility for the investigation and cleanup" of any hazardous waste on the premises and that the tenant is liable for, and must indemnify the landlord for, all costs resulting directly or indirectly from the "presence" of any hazardous waste on the premises.

This understanding of Paragraph 12 arises not only from the words and structure of the Lease, but also from the arbitrator's own findings as to the parties' intent. The arbitrator found that Mattel agreed to a comprehensive indemnification of Hall Street, irrespective of the time of the occurrence that resulted in the presence of hazardous wastes on the premises.

It is undisputed that the statute in question here is an "environmental law." The arbitrator's conclusion that the statute was not "applicable" is completely irrational in view of (a) the clear meaning of Paragraph 12 and (b) the undisputed facts that Mattel failed to test the water supply for eighteen years even though the statute required it to have done so, resulting in Mattel's signing of a consent order with the state's Department of Environmental Quality.

Accordingly, I would either affirm the decision of the district court (albeit on different grounds) or remand the case for reconsideration under the appropriate legal standard.